



ORIGINAL NEW APPLICATION

Arizona Department of Transportation

Intermodal Transportation Division

206 South Seventeenth Avenue Phoenix, Arizona 85007-3213



0000088304

Janet Napolitano
Governor

Victor M. Mendez
Director

August 21, 2008

Floyd Roehrich Jr.
Acting State Engineer

Mr. Chris B. Watson
Rail Safety Inspector
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

AUG 26 2008

DOCKETED BY RK	nr
-------------------	----

RE: TRACS No. 0940 GI GLB SR187 01C
Project No. STP-000-6(167)P
RAIL/HIGHWAY SAFETY PROGRAM
Cottonwood Street (Globe)
Arizona Eastern Railway Company
Agreement No. 2813-06-AZER
AAR/DOT No: 742-349-W

RR-02634A-08-0444

Dear Mr. Watson:

Please furnish our office with an Opinion and Order to cover the installation of Signals described in the subject agreement. An agreement covering the work has been signed by the Railroad Company. A copy is attached for your information and files.

After we receive the Opinion and Order, we will send you a copy of our letter authorizing the Railroad to proceed with the work.

Sincerely,

John Syers

Railroad Engineering Coordinator
Utility & Railroad Engineering Section
1655 West Jackson Street, Room 124, Mail Drop 215P
Phoenix, Arizona 85007
Phone 602 712-8694 Fax 602 712-3215 jsyers@azdot.gov

AZ CORP COMMISSION
DOCKET CONTROL

2008 AUG 26 A 9:49

RECEIVED

A. & B. CONTRACT NO. P001-2007 - 002741

ARIZONA DEPARTMENT OF TRANSPORTATION

UTILITY AND RAILROAD ENGINEERING SECTION

RAILROAD AGREEMENT

FEDERAL AID

Between

THE STATE OF ARIZONA

and

ARIZONA EASTERN RAILWAY COMPANY

AGREEMENT NO.: 2813-06-AZER
TRACS NO.: 0940 GI GLB SR187 01C
PROJECT NO.: STP-000-6(167)P
RAIL/HIGHWAY SAFETY PROGRAM
LOCATION: COTTONWOOD STREET (GLOBE)
AAR/DOT NO.: 742-349-W

THIS AGREEMENT is made between the STATE OF ARIZONA, acting through its DEPARTMENT OF TRANSPORTATION, and the ARIZONA EASTERN RAILWAY COMPANY, a corporation. All lettered exhibits are incorporated and made a part of this agreement by reference and attachment regardless of designation or alphabetical order.

INDEX

<u>Section</u>	<u>Page</u>
INDEX	2
I. RECITALS	3
II. DEFINITIONS	3
III. AGREEMENT	3
A. Construction Requirements	3
1. Changes in scope of WORK	4
2. Federal-Aid Project	4
B. Securing Funds	4
C. Subcontracting	4
1. Equal Opportunity	5
D. Start/Completion Date	5
E. Maintenance	5
F. The Acceptance Date	5
IV. SCHEDULES	6
A. RAILROAD Construction Schedule	6
V. PAYMENTS	6
A. Submission of Invoices	6
1. Material Procurement & Payment	7
2. Payments	7
3. Timely Payment of Invoices	8
4. Reimbursements	8
VI. LIABILITY	8
A. Liability	8
VII. STATUTORILY MANDATED TERMS	8
A. Arbitration	8
B. Budget Limitations	9
C. Executive Order 75-5 and 99-4	9
D. Cancellation by Governor	9
E. Records Retention and Audit	9
Signature & Notary Public Page	10
Exhibit "A" Cost Estimate	
Exhibit "B" Plans	

I RECITALS:

The purpose of this agreement is to furnish and install flashers and gates at Cottonwood Street, in the City of Globe, State of Arizona, where same crosses the property and tracks of RAILROAD at railroad milepost 1221.50.

II DEFINITIONS:

A. ADOT means the ARIZONA DEPARTMENT OF TRANSPORTATION.

B. AGREEMENT means this specific agreement and all attachments incorporated by reference.

C. A.R.S. means Arizona Revised Statutes

D. MUTCD means the "Manual on Uniform Traffic Control Devices" and any amendments and/or revisions thereto.

E. RAILROAD means the RAILROAD COMPANY

F. SPONSOR means the governmental authority that has jurisdiction over the roadway, City of Globe.

G. WORK means engineering, design, preparation of plans, specifications, construction labor, materials and equipment called for in the AGREEMENT, including approved changes in scope.

III AGREEMENT:

A. Construction Requirements. The RAILROAD shall furnish all necessary WORK to its existing facilities in accordance with the RAILROAD plans marked EXHIBIT "B". The WORK shall comply with the Signal Manual of Recommended Practice, published by the Agreement No. 2813-06-AZER

Association of American Railroads, the MUTCD and the installation procedures and recommendations of the crossing surface manufacturer.

1. Changes in Scope of WORK. Should some unforeseen condition or combination of conditions cause a change in the scope of WORK as called for by the plans, then RAILROAD shall not be obligated to incur, and ADOT shall not be obligated to reimburse RAILROAD for its share of the cost of WORK of changed scope until such change shall have been approved, in writing, by ADOT and RAILROAD.

2. Federal-Aid Project. Pursuant to the provisions of Federal-Aid Policy Guide, Part 646, there is no ascertainable net benefit to RAILROAD, and ADOT agrees to reimburse RAILROAD for one hundred percent (100%) of the cost and expense incurred in the furnishing of materials and performing the WORK as described in the "Summary of Estimate," marked EXHIBIT "A".

B. Securing Funds. It is understood and agreed that ADOT is acting as an agent for the SPONSOR in securing and administering Federal funds for this project. ADOT's liability is expressly limited to the securing and administering of Federal funds and ADOT assumes no other liability hereunder for the SPONSOR.

C. Subcontracting. The RAILROAD may, if not adequately staffed or equipped to perform the WORK required under this AGREEMENT, subcontract for the WORK using a proper competitive bidding process. The RAILROAD is hereby given permission to subcontract to the lowest responsible bidder. The RAILROAD agrees to furnish the bid amount of the successful bid to ADOT, upon request. If the RAILROAD wishes to

Agreement No. 2813-06-AZER

subcontract to other than the lowest responsible bidder, the RAILROAD must provide to ADOT the amount of the lowest responsible bidder and the amount of the bid from their chosen bidder along with written justification for the proposed choice. The RAILROAD agrees no selection will be made, other than the lowest responsible bidder, without ADOT's concurrence and written approval. ADOT reserves the right to reject any or all bids except the lowest responsible bid.

1. Equal Opportunity. In compliance with the regulations of the United States Department of Transportation, RAILROAD hereby agrees to comply fully with all of the provisions of Appendix "A" in those cases where RAILROAD does not perform the WORK contemplated in this Agreement with its own forces.

D. Start/Completion Date. Prior to commencing construction, RAILROAD agrees to notify ADOT, in writing, of the actual construction start date. Upon completion, RAILROAD agrees to notify ADOT, in writing, of the actual completion date. The construction start date shall not be prior to receiving a notice to proceed from ADOT. Construction progress payments shall not be made unless ADOT receives the notice of the actual construction start date. Final payment shall not be made unless ADOT receives the notice of the actual construction completion date.

E. Maintenance. After the installation of the WORK has been completed, RAILROAD shall maintain same as long as they remain in place.

F. The Acceptance Date. The acceptance date of this AGREEMENT shall be the day which the last party executes the AGREEMENT.

IV SCHEDULES:

A. RAILROAD Construction Schedule. The WORK to be performed by RAILROAD hereunder shall be commenced following ADOT authorization letter and shall be completed within such time as is ordered by the Arizona Corporation Commission in its Opinion and Order.

V PAYMENTS:

A. Submission of Invoices. The RAILROAD may submit to STATE itemized monthly invoices for WORK costs from the date of STATE's authorization for the RAILROAD to proceed with the WORK. Except for the final invoice, monthly invoices shall only be submitted for costs of five hundred dollars (\$500) or more. The RAILROAD shall, within ninety (90) days after completion of WORK, submit to STATE detailed invoices covering the actual cost of the WORK, including applicable taxes and standard RAILROAD overhead and subcontracting administration fee. Costs shall be accumulated and invoiced in accordance with the Federal Acquisition Regulations. The United States Code of Federal Regulations, 23CFR 646, is incorporated into this agreement by reference. All expenses incurred by RAILROAD for WORK which ADOT is obligated to reimburse RAILROAD for hereunder, including all WORK incidental to such WORK but not specifically mentioned herein, shall be subject to the provisions of the Federal-Aid Policy Guide 23CFR 140. Invoices shall include the appropriate AGREEMENT and CONSTRUCTION TRACS numbers and shall be labeled as "Progress Invoice" or "Final Invoice," as the case may be. In the absence of a compliant accounting system, STATE will allow a charge for overhead and indirect costs equal to five (5) percent of the total labor surcharges and materials. This

Agreement No. 2813-06-AZER

charge does not include any amount based on allowable subcontracts included in the AGREEMENT. If the RAILROAD wishes to use an existing continuing contract with a subcontractor, it shall supply STATE with supporting documentation as to the reasonableness of the cost. STATE will provide specific approval if the costs are deemed reasonable.

1. Material Procurement & Payment. Following execution of this instrument, RAILROAD will order the delivery of all materials required to perform the WORK contemplated herein and may submit to ADOT, upon receipt of all the aforementioned materials, an invoice for eighty percent (80%) of the cost of materials to be furnished by RAILROAD. ADOT will pay all of such bills within ninety (90) days after submittal by the RAILROAD.

2. Payments. ADOT agrees to reimburse RAILROAD for the actual costs of labor (including overhead on RAILROAD'S own direct labor), material (including shipping and handling), equipment, subcontracts, and outside services required to complete the WORK as shown on the plans, marked EXHIBIT "B". In addition, ADOT agrees to pay RAILROAD an agreed administrative fee, if shown on EXHIBIT "A", to cover RAILROAD'S expenses in connection with administration of WORK by subcontract and outside services. All billings shall contain ADOT's project number and agreement number. The invoice shall be sent to:

ARIZONA DEPARTMENT OF TRANSPORTATION
Utility & Railroad Engineering Section
205 South 17th Avenue, Room 357E
Mail Drop 618E
Phoenix, Arizona 85007

Agreement No. 2813-06-AZER

3. Timely Payment of Invoices. As soon as the WORK has been completed and placed in operation, RAILROAD shall submit to ADOT a final bill for the cost of WORK performed by RAILROAD, less any progress payments made by ADOT hereunder ADOT agrees to pay RAILROAD the amounts specified in the invoices described in this AGREEMENT above within ninety (90) days, provided RAILROAD shall have complied with the conditions of this Agreement.

4. Reimbursements. RAILROAD agrees to reimburse ADOT within ninety (90) days of notification, for any amounts ADOT disallows as a result of its audit. Any audit exceptions with which RAILROAD disagrees shall be paid to ADOT under protest subject to resolution.

VI LIABILITY:

A. Liability. ADOT and the RAILROAD each agree to be liable to the other party for its own acts of negligence and the negligence of its own employees.

VII STATUTORY MANDATED TERMS:

A. Arbitration. Claims and disputes between ADOT and RAILROAD involving sums less than \$100,000 and arising out of the terms of this Agreement relating to WORK performed, billing, and similar matters, shall be subject to arbitration, at the request of either party, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining; provided, however, that claims or disputes arising out of personal injury, death, property damage, or environmental incidents shall not be subject

to arbitration without the concurrence of both parties, except to the extent otherwise required by the rules of Arizona courts.

B. Budget Limitations. This AGREEMENT is subject to the provisions of Chapter 1 of Title 35, A.R.S.

C. Executive order 75-5 and 99-4. The RAILROAD shall comply with all applicable provisions of Executive Order 75-5 and 99-4, "Non-Discrimination in Employment by Government Contractors and Subcontractors".

D. Cancellation by Governor. All parties hereby are put on notice that this AGREEMENT is subject to cancellation by the Governor pursuant to A.R.S. §38-511.

E. Records Retention and Audit. Pursuant to A.R.S. Sections §35-214, §35-215 and §41-1279.04, all books, accounts reports, files and other records relating to this contract shall be subject at reasonable times to inspection and audit by ADOT for five (5) years after the receipt of final payment. Such records shall be produced by RAILROAD at such ADOT offices as designated by ADOT, or at ADOT's discretion said inspection and audit may be held at RAILROAD offices during normal business hours. ADOT shall conduct its inspection and audit at its sole expense. Final payment shall not include payments made pursuant to audit exceptions or made in resolution of payments under protest.

:

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT.

ARIZONA EASTERN RAILROAD CO.

ARIZONA DEPARTMENT OF
TRANSPORTATION

By: Kathleen S. Holguin

VICTOR M. MENDEZ, DIRECTOR

Bruce Vana
By: Bruce Vana, P.E., Engineer-Manager
Utility & Railroad Engineering Section

Date: 12-3-07

Date: 7-8-08

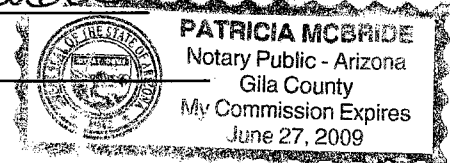
STATE OF ARIZONA)
COUNTY OF GILA) §

On this the 3rd day of Dec Nov, 2007, before me, the undersigned Notary Public, personally appeared, Kathleen Holguin Arizona Eastern Railroad Company, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal..

My Commission Expires: June 27, 2009

Patricia McBride
Notary Public



STATE OF ARIZONA)
COUNTY OF MARICOPA) §

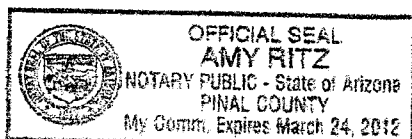
On this the 8th day of July, 2008, before me, the undersigned Notary Public, personally appeared Bruce Vana, the Engineer-Manager, Utility & Railroad Engineering Section, Arizona Department of Transportation, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

March 24, 2012

Amy Ritz
Notary Public



Agreement No. 2813-06-AZER

SUMMARY OF ESTIMATE

Construction:

Preliminary Engineering:	\$3,500.00
Signals	<u>\$165,999.33</u>
	*\$169,499.33

* Railroad will separate Preliminary Engineering costs from Construction costs.

ARIZONA EASTERN RAILWAY COMPANY

P.O. Box 2200 Claypool, Arizona 85532 (928) 473-2447 Fax: (928) 473-2449

October 20, 2005

Mr. John Syers
ARIZONA DEPARTMENT OF TRANSPORTATION
Intermodal Transportation Division
Utility & Railroad Engineering Section
205 South 17th Avenue, Mail Drop 618E
Phoenix, Arizona 85007-3213

RE: TRACS No. 0940 GI GLB SR187 01C
Project No. STP-000-6(167)P
RAIL/HIGHWAY SAFETY PROGRAM
Cottonwood Street (Globe)
Arizona Eastern Railway Company
AAR/DOT No: 742-349-W

Dear John:

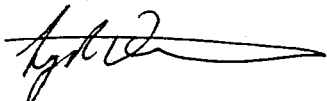
Enclosed is the **revised** detailed estimate for the above referenced crossing project.

SIGNALWORK ESTIMATE:

TOTAL (see attached):	\$	156,577.00
TAX:	\$	<u>6,717.15</u>
TOTAL:	\$	163,294.15
AERY ADMINISTRATION FEE:	\$	6,205.18
GRAND TOTAL:	\$	169,499.33

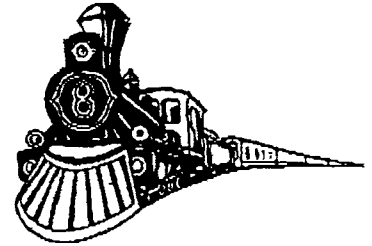
We look forward to working with you on this project. Please feel free to contact our office with any questions or comments.

Sincerely,



Terry R. Vanderplas
Mountain States Contracting, Inc.

TRACS No. 0940 GI GLB SR187 01C
Project No. STP-000-6(167)P
Agreement No. 2813-06-AZER
EXHIBIT "A"
Sheet 2 of 5



COST ESTIMATE

DATE: SEPTEMBER 20, 2005

TO: ARIZONA EASTERN RAILWAY CO.
P. O. BOX 2200
CLAYPOOL, AZ 85532-1008
FAX: 928-473-2449

RAILROAD TRAFFIC CONTROL, INC.

LOCATION:

COTTONWOOD STREET (GLOBE)
TRACS NO. 0940 GI GLB SR 187 OIC
PROJ. NO. STP-000-6(167)P MP 1221
DOT NO. 742-349W

ESTIMATED PROJECT COST

PRELIMINARY ENGINEERING	\$3,500.00
CONSTRUCTION ENGINEERING	\$3,500.00
SIGNAL MATERIAL	\$82,740.00
COMMERCIAL MATERIAL	\$19,219.00
ADMINISTRATIVE EXPENSE	\$6,118.00
RENTAL EQUIPMENT	\$7,000.00
MEALS, LODGING & TRANSPORTATION	\$2,000.00
LABOR INCLUDING, PAYROLL, TAXES, INSURANCES, PROFIT	\$22,000.00
SHIPPING CHARGES FOR MATERIAL	\$3,500.00
CONTINGENCIES	\$1,000.00
STONE & FILL	\$1,000.00
CLERICAL EXPENSE	\$1,500.00
CRIBBING	\$1,000.00
CONSTRUCTION EQUIPMENT, TOOLS, TRAILERS, TRUCKS - PLUS OPERATING COSTS	<u>\$2,500.00</u>
COST ESTIMATE TOTAL	\$156,577.00

NOTE: STATE AND LOCAL TAXES IF APPLICABLE SHOULD.
BE ADDED TO THIS ESTIMATE.

4824 Valley View Ct. • Dunwoody, GA 30338 • (770) 393-2298

TRACS No. 0940 GI GLB SR187 01C
Project No. STP-000-6(167)P
Agreement No. 2813-06-AZER
EXHIBIT "A"
Sheet 3 of 5

COST ESTIMATE - LOCATION - COTTONWOOD STREET (GLOBE)

SEPTEMBER 20, 2005

<u>UNITS</u>	<u>SIGNAL MATERIAL</u>	<u>PRICE</u>
2	GATE COMP. WITH B/B L.E.D. LIGHTS, POLE, JUNCTION BOX, BELL, X-BUCK, SIGN, GATE KEEPER, FOUNDATION, HIGH WIND BRACKET. GATE ARM TO BE 10M (30') EXTRA SET OF BACK TO BACK LIGHTS	\$31,594.00
1	CONTROL HOUSE WITH FAN, LIGHTS, RECEPTACLES, BREAKERS, ADJUSTABLE LEGS	\$12,801.00
1	MOTION SENSOR PMD-3R/RMM	251094-201
1	MD3A-1	250204-001
2	XLC UNIT	250991-000
1	VLG UNIT	250948-000
1	VRD UNIT	250651-000
1	GFD-3 GROUND FAULT DETECTOR	
2	RELAY BASE KIT XLC	251071-010
1	RELAY BASE KIT VLG	251071-100
1	XAP-20 ARRESTER PANEL	227162-000
8	LTG. ARRESTER AGA	202216-001
4	EQUALIZER ARRESTER AGE	202217-000
6	TERMINAL BLOCK 2 3/8"	250183-001
2	RECTIFIER CRAAG	4OEC-12V
1	EMERGENCY PANEL	
1	GROUND PLATE	
4	HOLE STRAP 36"	
8	PADLOCK	
1	HOUSE DECAL	
2	POLE DECAL	
12	BATTERY 400 AH	
2	HAND HOLE JCT. BOX	
2	NARROW BANK SHUNT	
	SIGNAL MATERIAL TOTAL	\$82,740.00

COST ESTIMATE - LOCATION - COTTONWOOD STREET (GLOBE)

SEPTEMBER 20, 2005

<u>UNITS</u>	<u>COMMERCIAL MATERIAL</u>	<u>PRICE</u>
1	RAIL BONDING	\$1,500.00
1	A.C. POWER SUPPLY	\$1,530.00
15M	CONDUIT 4" IMC	\$268.00
40M	CONDUIT 3"	\$483.00
300M	CABLE 4C #8	\$2,000.00
160M	CABLE 2C #6 TW	\$1,318.00
8	TRACK CONNECTION KIT	\$1,600.00
1	CONTROL HOUSE WIRING	\$7,000.00
1	EVENT RECORDER C.C. T.V.	<u>\$3,500.00</u>
	COMMERCIAL MATERIAL TOTAL	\$19,219.00

AAR/DOT No. 742-349-W
Arizona Eastern Railway Co.
Mile Post 1221.50

Install 4 - LED Flashers
and 24' Gate

Existing Timber
Crossing Surface

COTTONWOOD STREET

Install 4 - LED Flashers
and 21' Gate

TRACS No. 0940 GI GLB SR187 01C
Project No. STP-000-6(167)P
Agreement No. 2813-06-AZER
EXHIBIT "B"
Sheet 1 of 1

APPENDIX A
(Revised)

II EQUAL OPPORTUNITY

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors commitments under this section II-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965; and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. Compliance With Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.